STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF

RHODE ISLAND STATE LABOR
RELATIONS BOARD CASE NO: ULP-5225

-AND-

THE CITY OF CENTRAL FALLS ;

## DECISION AND ORDER

### TRAVEL OF CASE

The above entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter Board) on an Unfair Labor Practice Complaint (hereinafter Complaint) issued by the Board against the City of Central Falls (hereinafter Employer) based upon an Unfair Labor Practice Charge (hereinafter Charge) dated January 17, 1997, and filed on January 21, 1997, by R.I. Council 94, AFSCME, AFL-CIO, Local 1627, ( hereinafter Union).

The Charge alleged:

> Violation of Section 28-7-13 Paragraphs (1) (6) and (10)
> The City engaged in intimidation and coercion by requiring employees to be interrogated and tape recorded during said interrogation over the employees objections. The employees were threatened with immediate suspension if they did not comply.

Following the filing of the Charge, an informal conference was held on February 12, 1997, between representatives of the Union and Respondent and an Agent of the Board. Board issued the instant Complaint on September 22, 1998. The Employer filed its Answer to the Complaint on October 1, 1998, denying the allegations contained in paragraphs 3 and 4 of the Complaint and asserting five (5) affirmative defenses.

A formal hearing on this matter was originally scheduled for February 2, 1999, but was rescheduled to February 16, 1999, and then to March 16, 1999, at the request of the Union. Employer requested a continuance from the March 16, 1999 date, due to a conflict with a Federal Court matter. The formal hearing was ultimately held on June 17, 1999. Upon conclusion of the case, the parties argued their positions orally; no briefs were filed in this case. On June 28, 1999, the Employer filed a written request with the Board seeking a disqualification of Board Member,

Frank J. Montonaro.[1] In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony and evidence presented

## FACTUAL SUMMARY

The essential facts in this case are undisputed. In September, 1996, two Central Falls laborers were observed by Mayor Lee Matthews of the City of Central Falls, while they were conducting a rubbish pickup route. The Mayor testified that he observed the men driving down a road, upon which all the rubbish pails were already empty. He decided that activity was "odd", so the Mayor began to follow the rubbish truck. The Mayor testified that he followed the truck for approximately an hour and that they never stopped to pick up any rubbish cans. After some time, the rubbish truck returned to the garage. The Mayor stated, that he believed the men were "stealing" from the City of Central Falls because they were driving around, doing nothing, when they were supposed to be working on a route.

The Mayor determined that the men should be questioned immediately concerning this incident, to determine their side of the story. (TR. p. 23) He asked the Director to ask each of the men to come in separately to give their statements and that he wanted the statements tape recorded. (TR. p. 24-25) Both men objected to the tape recordings, but ultimately did submit to the tape recording, after being told that if they did not submit, then the City would act on the information available to it, without their testimony. The evidence established that both men were docked an hour's pay for the incident.

## POSITION OF THE PARTIES

The Union's position is that the City's actions constitute a clear violation of the rights of employees under the Labor Relations Act in that the City was attempting to, and did, intimidate and coerce the two laborers into giving their tape recorded statements.

The City argues that there is absolutely nothing in the law that prohibits the City from tape recording this type of proceeding. Further, the City argues that the reason that the proceeding was tape recorded is that both the Assistant Town Solicitor and the City's Personnel Consultant were on vacation and were unavailable to conduct the proceeding. The Mayor testified that the reason he wanted the questioning to take place immediately is so that the two

[1] The Board does not have the authority to disqualify a member from participating on a case. Any such recusal must be initiated by the individual member. In this case, Mr. Montonaro did not decide to recuse himself, and he participated in this decision.

men would not have the opportunity to "corroborate" a story. The City argues that this proceeding was similar, in nature, to a pre-termination proceeding or a hearing before an arbitrator, in that the parties have the right to record testimony, events, statements, and to memorialize the same.

## DISCUSSION

This case appears to be one of first impression for this Board. A review of the agency's records does not reveal another charge or complaint regarding the forced audio tape recording of witness statements. However, in ULP-5200, State of Rhode Island, DCYF, decided by this Board on May 1, 2001, we found that because of the inter-relatedness of the disciplinary procedures with the grievance and arbitration procedures, and because of the long-standing methods for conducting the process, the Employer's unilateral change to the process constituted an unfair labor practice pursuant to R.I.G.L. 28-7-13 (10).

In this case, the Employer acknowledged that it had not previously, or since, tape recorded any of these "pre-termination" or "due process" hearings. The employees, in this case, were told, when they objected, that unless they submitted to the procedure they would be sent home without pay, until they did consent. Faced with the prospect of losing their pay, the employees submitted to the tape recording, under protest. Such a heavy-handed and one-sided approach to these interviews by the Employer evidences a disregard by the Employer for one of the fundamental policies of the Rhode Island State Labor Relations Act, as set forth at R.I.G.L. 28-7-2 that is; that it is in the public interest that equality of bargaining power be established and maintained. Even though the employees, in this case, had a Union representative present during the "pre-termination" hearing, the representative wasn't given any opportunity to collectively bargain over how the interviews would take place. When there isn't even a pretext to equality of bargaining power, and one party exerts a totalitarian control over a mandatory subject for bargaining, such as discipline, this Board believes there has been a violation of the Rhode Island State Labor Relations Act, and we so find

## FINDINGS OF FACT

) The Respondent is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.

2) The Union is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection; and as such, is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.

3) In September, 1996, two Central Falls laborers were observed by Mayor Lee Matthews of the City of Central Falls, while they were conducting a rubbish pickup route. The Mayor testified that he followed the truck for approximately an hour, and that they never stopped to pick up any rubbish cans. The Mayor determined that the men should be questioned immediately concerning this incident, to determine their side of the story.

4) He ordered the Director of Public Works to ask each of the men to come in separately to give their statements and to tape record their statements, over the protests of the employees and their Union representative.

5) This tape recording of a disciplinary hearing was the first time the Employer had engaged in this practice. The Employer unilaterally imposed this requirement upon the disciplinary process, without any discussion at all, let alone any meaningful opportunity for the Union to bargain collectively over this issue.

## CONCLUSIONS OF LAW

1) The Union has proven, by a fair preponderance of the credible evidence, that the Employer has committed a violation of R.I.G.L. 28-7-13, Paragraphs (6) and (10).

2) The Union has not proven, by a fair preponderance of the credible evidence, that the Employer has committed a violation of R.I.G.L. 28-7-13, Paragraph (1).

## ORDER

1) The Employer is hereby ordered to cease and desist from threatening employees with termination, or to coerce them into submitting to tape recording statements, during disciplinary interrogations.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni Chairman

Frank J. Montanaro, Member

Joseph V. Mulvey, Member

Gerald S. Goldstein, Member

Ellen L. Jordan, Member (Dissent)

John R. Capobianco, Member

Elizabeth S. Dolan, Member (Dissent)

Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: July 3, 2001

By: _____
Joan N. Brousseau, Administrator